

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 346**

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**Introduced by ~~Senator Kehoe~~ *Senators Kehoe and Simitian***

February 25, 2009

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An act to add Article 13.5 (commencing with Section 25250.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 346, as amended, Kehoe. Hazardous materials: motor vehicle brake friction materials.

(1) Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding the management of hazardous waste. Existing law, administered by the department, prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any mercury-containing vehicle light switch from a vehicle, and the regulations adopted by the department. A violation of the hazardous waste control laws is a crime.

This bill would require the department to conduct a baseline survey, on or before January 1, 2013, of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials. The bill would require the department, commencing on January 1, 2013, and at least every 3 years thereafter, to monitor the concentration levels of nickel, zinc, and antimony in motor vehicle brake friction materials to ensure that those levels do not increase by more than 50% above the baseline levels established through the baseline survey. In that case, the

bill would require the department to ask the State Water Resources Control Board or the Office of Environmental Health Hazard Assessment, as specified, to determine whether there is a need for controlling the use of the relevant constituent in brake friction material. If the department determines that there is a demonstrated need for controlling the use of the studied constituents in brake pads, the bill would require the department to prioritize the presence of those constituents in brake friction materials for regulation, as specified. The bill also would require the department to monitor copper.

The bill, commencing on January 1, 2014, would prohibit the sale of any motor vehicle brake friction materials containing specified constituents, including, but not limited to, cadmium, lead, and mercury, in amounts that exceed certain concentrations. The bill, commencing on January 1, 2021, would restrict the concentration of copper in motor vehicle brake friction materials sold in California, as specified. The bill, commencing on January 1, 2014, would require all manufacturers of friction materials used in brakes on new motor vehicles, or as replacement parts, that are sold in this state to obtain a certification of compliance with these requirements from a 3rd party testing agency, and to mark proof of certification on the friction materials. The bill would require the department to enforce these provisions, and would require the department to remove from sale any ~~brake replacement~~ *brake pads with* friction materials determined to be not in compliance. A violation of these provisions would be subject to a civil fine of up to \$10,000 per violation. Because a violation of these provisions would also be a crime pursuant to the hazardous waste control laws, the bill would impose a state-mandated local program.

The bill would require the department, commencing on January 1, 2011, to impose a fee of \$1 on each new axle brake set sold in the state, whether fitted to a new vehicle or ~~solid~~ *sold* separately, and would authorize the department, commencing on January 1, 2015, and after consulting interested parties, to adjust the fee to a level sufficient to fully implement these provisions. The bill would require the fee to be used to cover specified costs related to copper and other constituents in brake friction materials.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Friction materials are an essential component of motor  
4 vehicle brake systems and of critical importance to transportation  
5 safety and the public safety in general.

6 (b) Debris from friction materials are generated and released to  
7 the surrounding environment in the course of normal brake system  
8 operation.

9 (c) Brake friction materials on motor vehicles are known to  
10 contain constituents, including copper, that have been proven to  
11 be harmful when found in significant quantities in the environment,  
12 and are regulated as part of a system of laws and regulations  
13 intended to prevent pollution and preserve the environment.

14 (d) Limits on the harmful constituents in brake friction materials  
15 are necessary to protect and enhance California's environment.

16 (e) Limits on the copper content of brake friction materials are  
17 necessary for compliance with copper water quality standards and  
18 successful implementation of copper total maximum daily loads  
19 in California's urban watersheds.

20 (f) Changes in the composition of brake friction materials made  
21 to protect and enhance California's environment should meet all  
22 applicable safety standards.

23 (g) Manufacturers of brake friction materials should use due  
24 diligence to ensure that formulations that replace copper in brake  
25 friction materials are less harmful to public health and the  
26 environment.

27 SEC. 2. Article 13.5 (commencing with Section 25250.50) is  
28 added to Chapter 6.5 of Division 20 of the Health and Safety Code,  
29 to read:

30  
31 Article 13.5. Motor Vehicle Brake Friction Materials

32  
33 25250.50. For purposes of this article, the following definitions  
34 apply:

35 (a) "Board" means the State Water Resources Control Board.

(b) “Department” means the Department of Toxic Substances Control.

(c) “Motor Vehicle” has the same meaning as “vehicle” is defined in Section 670 of the Vehicle Code.

(d) “Testing agency” means an agency approved by the department as qualified and equipped for the testing of products, materials, equipment, and installations in accordance with nationally recognized standards.

25250.52. (a) On and after January 1, 2021, any motor vehicle brake friction materials exceeding 5 percent copper by weight shall not be sold in this state.

(b) On and after January 1, 2032, any motor vehicle brake friction materials exceeding 0.5 percent copper by weight shall not be sold in this state.

(c) Manufacturers of vehicles and vehicle brake friction materials shall monitor and provide two reports to the department on the reduction of the concentration level of copper in motor vehicle brake friction materials. The first report shall be due on or before January 1, 2016, and the second report shall be due on or before January 1, 2018.

25250.54. On and after January 1, 2014, any motor vehicle brake friction materials containing any of the following constituents in an amount that exceeds the following concentrations shall not be sold in this state:

(a) Cadmium and its compounds: 0.01 percent by weight.

(b) Chromium(VI)-salts: 0.1 percent by weight.

(c) Lead and its compounds: 0.1 percent by weight.

(d) Mercury and its compounds: 0.1 percent by weight.

(e) Asbestiform fibers: 0.1 percent by weight.

25250.56. (a) On or before January 1, 2013, the department shall conduct a baseline survey of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials. Commencing on January 1, 2013, and at least every three years thereafter, the department shall monitor the following constituents to ensure that concentration levels of those constituents in motor vehicle brake friction materials do not increase by more than 50 percent above the baseline levels established through the baseline survey:

(1) Nickel and its compounds.

(2) Zinc and its compounds.

1 (3) Antimony and its compounds.

2 (b) In the monitoring required by subdivision (a), the department  
3 also shall monitor copper.

4 (c) If monitoring results for zinc show that concentration levels  
5 have increased by more than 50 percent above the baseline levels,  
6 the department shall ask the board to use published data from  
7 scientific literature to estimate the relative contribution of zinc  
8 from brake friction materials to the total quantity of zinc in urban  
9 runoff. On the basis of this estimate, the board shall determine  
10 whether there is a need for controlling the use of zinc in brake  
11 friction material.

12 (d) If monitoring results for nickel show that concentration  
13 levels have increased by more than 50 percent above the baseline  
14 levels, the department shall ask the board to use published data  
15 from scientific literature to estimate the relative contribution of  
16 nickel from brake friction materials to the total quantity of nickel  
17 in urban runoff. On the basis of this estimate, the list adopted as  
18 required by Section 303(d) of the federal Clean Water Act (33  
19 U.S.C. Sec. 1313(d)), and available water quality monitoring data,  
20 the board shall determine whether there is a need for controlling  
21 the use of nickel in brake friction material.

22 (e) If monitoring results for antimony show that concentration  
23 levels have increased by more than 50 percent above the baseline  
24 levels, the department shall ask the Office of Environmental Health  
25 Hazard Assessment to review scientific literature to determine  
26 whether there is a need for controlling the use of antimony in brake  
27 friction material.

28 (f) All studies and surveys conducted by the department under  
29 this section shall be subject to public review and comment.

30 (g) If the department determines that the scientific studies  
31 demonstrate the need for controlling the use of the studied  
32 constituents in brake pads, the department shall prioritize the  
33 presence of the studied constituents in brake friction materials for  
34 regulation pursuant to Section 25252.

35 (h) Vehicle brake manufacturers shall follow an alternative  
36 evaluation process, for the studied constituents in brake pads,  
37 adopted by the department pursuant to Section 25253.

38 25250.58. The following motor vehicle classes and brakes are  
39 exempt from this article:

40 (a) Military combat vehicles.

1 (b) Vehicles employing internal closed oil immersed brakes, or  
2 a similar brake system that is fully contained and emits no copper,  
3 other debris, or fluids under normal operating conditions.

4 (c) Brakes designed for the primary purpose of holding the  
5 vehicle stationary and not designed to be used while the vehicle  
6 is in motion.

7 25250.60. (a) Commencing on January 1, 2014, all  
8 manufacturers of friction materials used in brakes on new motor  
9 vehicles, or as replacement parts, that are sold in this state shall  
10 obtain a certification of compliance with the requirements of  
11 Section 25250.54 from a third-party testing agency. Proof of  
12 certification shall be marked on the friction materials.

13 (b) Commencing on January 1, 2021, and until December 31,  
14 2031, all manufacturers of friction materials used in brakes on new  
15 motor vehicles, or as replacement parts, that are sold in this state  
16 shall obtain a certification of compliance with the requirements of  
17 subdivision (a) of Section 25250.52 and Section 25250.54 from a  
18 third-party testing agency. Proof of certification shall be marked  
19 on the friction materials.

20 (c) Commencing on January 1, 2032, all manufacturers of  
21 friction materials used in brakes on new motor vehicles, or as  
22 replacement parts, that are sold in this state shall obtain certification  
23 of compliance with the requirements of subdivision (b) of Section  
24 25250.52 and Section 25250.54 from a third-party testing agency.  
25 Proof of certification shall be marked on the friction materials.

26 (d) Manufacturers of friction materials used for brakes on new  
27 motor vehicles, or as replacement parts, may obtain certification  
28 of compliance with the requirements of subdivision (a) or (b) of  
29 Section 25250.52 or Section 25250.54 at any time.

30 (e) The department, in consultation with all interested parties,  
31 and on or before January 1, 2011, shall develop all certification  
32 and marking criteria required pursuant to this section.

33 (f) Commencing on January 1, 2014, vehicle manufacturers and  
34 retailers of friction materials shall ensure that only brakes certified  
35 for sale in this state are offered for sale in this state.

36 25250.62. (a) A violation of this article, including, but not  
37 limited to, the falsification of third-party certification, by vehicle  
38 manufacturers, brake pad manufacturers, distributors, or retailers,  
39 shall be subject to a civil fine of up to ten thousand dollars  
40 (\$10,000) per violation.

(b) The department shall enforce this article. The department shall remove from sale in this state any ~~brake replacement brake pads with~~ friction materials determined to be not in compliance with this article.

(c) *In enforcing this article, the department shall not recall automobiles fitted with brake pads that do not comply with this article, but the department may impose fines and penalties authorized pursuant to subdivision (a) on automobile manufacturers whose vehicles are fitted with brake pads that do not comply with this article.*

25250.64. (a) (1) Commencing on January 1, 2011, the department shall impose a fee of one dollar (\$1) on each new axle brake set sold in the state, whether fitted to a new vehicle or sold separately.

~~(b)~~

(2) Commencing on January 1, 2015, and after consulting interested parties, the department may adjust the fee on each new axle brake set sold in this state, whether fitted to a new vehicle or sold separately, to a level sufficient to fully implement this article.

(b) The fee shall only be used to cover costs for outreach, administration, fee collection, enforcement, monitoring, mitigation, and control measures related to copper and other constituents in brake friction materials.

(c) Not more than 5 percent of the fees collected pursuant to this section shall be used to offset accounting costs incurred for fee collection.

(d) Funds for outreach may be allocated by the department to trade associations associated with the manufacture and sale of brake friction materials for purposes of outreach to, and education of, their memberships.

(e) The department shall consult with the board prior to allocating funds to, or implementing any provisions of this article relating to, motor vehicle brake friction materials constituent monitoring, mitigation, or control measures.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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